

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-N-00037-DFM
)	
TODD CHRISTIAN SMITH,)	
)	DECISION AND ORDER OF
Member No. 167013,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this default disciplinary matter, respondent **Todd C. Smith** (Respondent) is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the Review Department of the State Bar Court on September 17, 2009. In view of Respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

On March 19, 2010, the Office of the Chief Trial Counsel of the State Bar of California filed its Notice of Disciplinary Charges (NDC) in this matter. It consists of a single count alleging that Respondent failed to comply with an order from the Review Department of this court, requiring Respondent to file with the clerk of this court a declaration of timely compliance with rule 9.20.

¹ All references to rule 9.20 are to California Rules of Court, rule 9.20.

A copy of the NDC was properly served on Respondent on March 19, 2010, by certified mail, return receipt requested, addressed to Respondent at his official membership records address (official address).² The letter was returned to the State Bar by the United States Postal Service as undeliverable.

Both before and after the service of the NDC, the State Bar made additional efforts to communicate with Respondent regarding the disciplinary matter, including talking with him numerous times about scheduling an ENE, mailing to him a copy of the NDC, leaving him voicemail messages, and sending to him email messages. All of these State Bar efforts to communicate with Respondent proved unsuccessful in getting him to participate in this disciplinary process.

The court finds that Respondent was properly served with a copy of the NDC and that all due process requirements have been adequately satisfied. (See *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent was required to file a response to the NDC. (Rules Proc. of State Bar, rules 103(a), 584.) He did not. Nor did he appear at the initial status conference ordered by the court and conducted on March 24, 2010. On May 12, 2010, the State Bar filed a motion for the entry of Respondent's default. A copy of that motion was properly served on Respondent on May 12, 2010, by certified mail, return receipt requested, addressed to Respondent at his official address. Respondent failed to respond to that motion.

On June 1, 2010, Respondent's default was entered. The order of entry of default was properly mailed to Respondent's official membership records address. Respondent was enrolled

² Pursuant to Evidence Code 452, subdivision (h), the court takes judicial notice of respondent's official membership records contact information and address history.

as an inactive member under Business and Professions Code § 6007, subdivision (e), effective June 4, 2010.³

On June 14, 2010, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. On June 21, 2010, the court took the case under submission for decision without a hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted upon entry of Respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 13, 1993, and has been a member at all times since that date.

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On or about September 17, 2009, the Review Department of the State Bar Court In Bank filed its Order in Case No. 09-C-12556 (9.20 Order). The 9.20 Order included a requirement that Respondent comply with Rule 9.20 by performing the acts specified in subdivisions (a) and (c) of the rule within 30 and 40 days, respectively, after the effective date of the 9.20 Order.

On or about September 17, 2009, the Clerk of the State Bar Court properly served upon Respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.

The 9.20 Order became effective on October 16, 2009, thirty days after the 9.20 Order was filed. Respondent was ordered to comply with subdivision (a) of rule 9.20 of the California Rules of Court no later than on or about November 15, 2009, and was ordered to comply with subdivision (c) of Rule 9.20 no later than on or about November 25, 2009.

³ All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

Respondent did not file with the clerk of the State Bar Court a declaration of compliance with Rule 9.20 (a), as required by Rule 9.20(c), until January 21, 2010.

By failing to timely file a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c), Respondent failed to comply with the provisions of the 9.20 Order. By the foregoing conduct, Respondent willfully violated rule 9.20, California Rules of Court.

Failure to Obey Court Order to Comply with Rule 9.20

Rule 9.20(c) mandates that Respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.” The term “willful” in the context of rule 9.20, formerly rule 955, does not require bad faith or any evidence of intent. It is not necessarily even dependent on showing the respondent’s knowledge of the court’s order requiring compliance. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342; *Hamilton v. State Bar* (1979) 23 Cal.3d 868, 873-874.) The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar, supra*, 44 Cal.3d 337, 341.)

By failing to timely file a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20(c), Respondent failed to comply with the provisions of the 9.20 Order in Case No. 09-C-12556. By the foregoing conduct, Respondent willfully violated Rule 9.20.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

Misconduct, std. 1.2(b).)⁴

Prior Discipline

Standard 1.2(b)(i) provides that the existence of prior record of discipline and the nature and extent of that record is an aggravating circumstance. (See also standard 1.7); (Std. 1.2(b)(i).)

On July 2, 2003, in Supreme Court Case No. S114603 (State Bar Case Nos. 01 -O-01854 and 01-O-02515), the Supreme Court of California issued an order imposing discipline as to Respondent consisting of one year stayed suspension and three years probation with conditions, including sixty days actual suspension. The discipline resulted from Respondent's stipulation to violating section 6106 in two separate matters by issuing checks from his client trust account for personal use and not related to any client purpose. Thereafter, on June 24, 2004, in Supreme Court Case No. S114603 (State Bar Case No. 04-PM-10575), the Supreme Court issued an order lifting the prior stay of execution of one year suspension and actually suspending Respondent from the practice of law for one year, due to Respondent's violation of the terms of his probation. Those probation violations included his failures to timely develop a law office management plan, submit proof of psychological treatment, and submit quarterly probation reports.

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

Lack of Cooperation

A member's failure to participate in the disciplinary process may be an aggravating factor. (Std. 1.2(b)(vi).) Respondent's failure to participate in this proceeding is such an aggravating factor.

⁴ All further references to standard(s) are to this source.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) There is no evidence of any mitigating circumstance.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

The standard here for assessing discipline is set out in the first instance in the rule itself. Rule 9.20(d) states, in pertinent part: “A suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.”

Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Respondent has repeatedly demonstrated an unwillingness to comply with his professional obligations. He has also demonstrated an unwillingness to participate in the disciplinary process. As a consequence, his disbarment is necessary to protect the public, the courts and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

RECOMMENDED DISCIPLINE

Disbarment

The court hereby recommends that respondent **Todd C. Smith**, Member No. 167013, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

Rule 9.20

The court recommends that the Supreme Court order Respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁵

Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. of State Bar, rule 291.)

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that **Todd C. Smith**, Member No. 167013, be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4), and rule 220(c) of the

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⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar*, *supra*, 44 Cal.3d 337, 341.)

Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after service of this order.

Dated: July _____, 2010

DONALD F. MILES
Judge of the State Bar Court